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ABSTRACT

To determine whether newspapers are equally responsive to threats to freedom of speech and to freedom of the press, the news and editorial coverage by ten daily newspapers of 40 United States Supreme Court decisions concerning free expression was analyzed. The 20 free-press and 20 free-speech cases were randomly selected from over 70 free-expression decisions filed by the Court from 1966 to 1975. The speech cases concerned the right of individuals to communicate directly with other individuals through speech, signs, symbols, or leaflets. The press cases dealt with the right to communicate indirectly using a form of mass communication. Newspaper stories were examined for three days and editorials for ten days after the decisions had been filed. The ten newspapers combined gave significantly greater coverage to the press decisions, reporting them 85% of the time as opposed to 60% of the time for speech cases. Press decisions were mentioned in headlines 65% of the time, compared to 25% for speech cases. The newspapers editorialized on press decisions 24% of the time to 8% for speech decisions, and tended to favor free expression significantly more often in editorials about the press than in those about speech. (FL)

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A COMPARISON OF NEWS AND EDITORIAL COVERAGE OF SPEECH AND PRESS DECISIONS OF THE SUPREME COURT

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A COMPARISON OF NEWS AND EDITORIAL COVERAGE OF SPEECH AND PRESS DECISIONS OF THE SUPREME COURT

by F. Dennis Hale*

It is argued that press advocacy of free expression is largely self-serving; that the press is more concerned with freedom of the commercial press than with the broader concepts of freedom of press for dissidents and freedom of speech for ordinary citizens. This view holds that when the press invokes its constitutional right of freedom of press, its main concern is for laissez-faire rights and freedom of economic action. Thus when the press focuses attention on First Amendment press freedom, it primarily is interested in running a privately owned business with a minimum of government interference, an interest that it shares with other businesses in the free enterprise system.

In support of this viewpoint a journalism historian has observed: "American publishers have always been willing to allow suppression of the radical press; often they have led the efforts to punish it."[1] Kansas editor William Allen White commented: "The people have a keen and accurate sense that much of editorial anxiety about the freedom of the press rises out of editorial greed."[2] Contemporary editors also are aware of this criticism of the press. When editorialists for the Sacramento Bee wrote about the Nebraska gag order in late 1975 the

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*The author is an assistant professor of journalism at Baylor University in Waco, Texas. This study was conducted through a grant from the Baylor University Research Committee.

[1]John D. Stevens, "Freedom of Expression: New Dimensions," in Mass Media and the National Experience, eds. Ronald T. Farrar and John D. Stevens (New York: Harper & Row, 1971), p. 25.

[2]Quoted in Morris K. Udall, "What's Killing Independent Publishers? It's Time to Find Out," Publishers' Auxiliary, April 25, 1977, p. 8.

the writers prefaced their remarks with the almost apologetic statement, "Some readers may think it's a reflex action in self-interest when the press sounds the alarm against erosions of its freedoms...."[3]

This study asks the question: Is the press equally responsive in sounding the alarm when other basic freedoms are threatened, particularly freedom of speech?

There is evidence that the press is not as concerned with speech rights as press rights. Editorials on File reprints the editorials of 120 newspapers that represent one-third of U.S. daily newspaper circulation.[4] When newspapers independently comment on the same subject, the editorials are grouped, indexed and reprinted by the twice-monthly editorial survey. During the seven-and-one-half year period, January 1970 through June 1977, the editorial service reported on 17 freedom of expression matters before the U.S. Supreme Court. Of the 17, 14 concerned the press, 3 speech. During this period about an equal number of press and speech decisions was filed by the Court.

The two empirical studies that are related to this issue arrive at contradictory conclusions. An analysis of the response of Wisconsin newspapers to sedition laws during World War I identified few instances of the press defending free expression.[5] With a few exceptions, the press objected to such infringement only when it directly threatened the press. Another study of editorial reaction in a national sample of newspapers arrived at an opposite conclusion. The study examined two periods--after World War I and before World War II--when sedition bills were being debated in Congress. Editorials during the two periods

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[3]Editorial, Sacramento Bee, December 15, 1975.

[4]Editorials on File (New York: Facts on File, Inc.).

[5]John D. Stevens, "Suppression of Expression in Wisconsin During World War I," Ph.D. dissertation, University of Wisconsin, 1967, p. 191.

generally supported expression, with 62 percent of some 290 editorials favoring speech and press.[6] The study concluded that support by the metropolitan newspapers was not dependent on whether the threat to freedom of expression directly affected the press.[7]

The present study examined a similar question in a more contemporary context. It compared the news and editorial coverage by ten daily newspapers of forty free expression decisions of the U.S. Supreme Court during the last decade. Half of the decisions were free press cases that directly affected the press, and half were free speech cases.

Method

Ten newspapers were selected from the microfilm collections of Baylor University and the University of Texas. Except for the Waco paper, the resulting sample consisted of metropolitan and morning dailies (indescending order of circulation): Wall Street Journal, Los Angeles Times, New York Times, Chicago Tribune, Washington Post, Dallas Morning News, Atlanta Constitution, Christian Science Monitor, Austin American-Statesman, Waco Tribune-Herald.

The 20 press and 20 speech cases were randomly selected from the over 70 free expression decisions that were filed by the Supreme Court during its nine terms, 1966-75. The decisions were identified by checking all First Amendment entries of the "Table of Statutes, Constitutions, Proclamations and Treaties Cited and Construed" of United States Supreme Court Reports, Lawyer's Edition. Speech cases concerned the right of private individuals to communicate in-person with other individuals, with speech, signs, symbols or leaflets. Press cases concerned the right to communicate indirectly using a form of

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[6]Dorothy Bowles, "Newspaper Support for Free Expression in Times of Alarm, 1920 and 1940," Journalism Quarterly 54: 275 (Summer 1977).

[7]Ibid., p. 279.

mass communications.

The resulting 40-decision sample began with Time, Inc. v. Hill,[8] filed on January 9, 1967, and concluded with Bigelow v. Virginia,[9] released by the Court on June 16, 1975. Both were free press cases, the first concerning false-light invasion of privacy, and the second commercial expression. The 40 cases were filed on 31 different decision days, 25 of them days when a single expression case was filed by the Court and six of them when two or three expression decisions were filed at once. (The 40 cases are listed in the appendix.)

Newspapers were examined for three days after a decision was filed for stories about the case. The study was restricted to newspaper accounts primarily devoted to the substance of the Court decision. Separate stories on reactions to the decisions, of which there were few, were not coded. For each publication opportunity (40 decisions, 10 newspapers, N=400), four news characteristics were coded: 1. report--whether the Court decision was reported; 2. inches--number of standardized column inches published about the decision;[10] 3. front page--mention of decision on front page or story that continued from the front page; 4. headline--mention of the decision in the headline. (Newspapers ordinarily group all of the Supreme Court actions from one day in a single story with a headline that focuses on one decision. In this sample the mean number of written decisions filed at once was 6.53.)

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[8] 385 U.S. 374.

[9] 421 U.S. 809.

[10] A standardized column inch was 25 characters wide and eight lines deep, or 200 characters.

Newspapers also were examined for the ten days after a decision was filed for editorials about the decision. For each publication opportunity, four editorial characteristics were coded: 1. editorial--publication of an editorial that mentioned the decision; 2. timely--publication of a decision editorial within two days of the decision's filing; 3. pro-court--if the editorial favored the decision of the Court; 4. pro-expression--if the editorial favored the specific form of freedom of expression that was asserted in the case.

Chi square tests determined if the differences in news and editorial coverage of the speech and press decisions were statistically significant.

In addition, multiple regression was used to consider if intervening variables associated with legal significance were responsible for differences in coverage of the speech and press decisions.[11] Four equations were tested for the criterions: report of decision, inches, headline, and editorial mention. In each equation the same predictor variables were entered and in the same order: number of states in which courts had cited the Supreme Court decision, length of the majority opinion of the decision, whether decision concerned speech or press. Thus the equations tested if the speech-press variable accounted for a significant amount of variance beyond the variance accounted for by the two measures of legal significance.[12]

Results

The ten newspapers provided significantly different amounts of coverage of the 40 decisions (see Table 1). These differences were statistically significant for

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[11] The SPSS regression program was used. Norman H. Nie et al., Statistical Package for the Social Sciences, 2nd ed. (New York: McGraw-Hill Book Co., 1975), pp. 320-367.

all of the news and editorial characteristics. As might be expected, the Washington Post and New York Times were the leaders in total column inches. The Post, Wall Street Journal and Chicago Tribune all reported on 85 percent of the decisions. The mean performance of the dailies was to report 72 percent, place 28 percent on page one, mention 45 percent in headlines, and editorialize on 16 percent. The Austin, Texas, paper reported the fewest decisions (50 percent), and the Waco, Texas, paper editorialized on the fewest (8 percent).

The two leaders in editorial coverage were the Washington Post and Chicago Tribune, which commented on 12 and 13 decisions respectively. Each paper supported free expression in ten instances. Most of the editorials in the ten newspapers favored both free expression and the Court. One exception was the Dallas Morning News, which opposed both the Court and free expression in most of its six editorials.

Differences in treatment of the press and speech decisions were evident in descriptive statistics concerning the individual decisions. Of 14 decisions that received 100 or more inches of coverage, 12 concerned

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[12]Opinion length was one of the decision characteristics examined in F. Dennis Hale, "Variables Associated With Newspaper Coverage of California Supreme Court Decisions: A Multivariate Analysis," Ph.D. dissertation, Southern Illinois University at Carbondale, 1977, p. 24. Various authors have discussed the use of subsequent citations of a court decision as a measure of its legal significance. Silverman said, "The sheer quantity of appellate court opinions on specific issues therefore has significance." Milton J. Silverman, "The Unwritten Law: The Unpublished Opinion in California," California State Bar Journal 51: 34-35 (January-February 1976). And Mott noted that "the extent to which the decisions of a court are followed by its fellows...is evidence of its influence on the general development of the law in the United States." Rodney L. Mott, "Judicial Affairs," American Political Science Review 30: 307 (April 1936). Also see Stuart S. Nagel, "Sociometric Relations Among American Courts," Southwestern Social Science Quarterly 43: 136-138 (September 1962); Stephen L. Wasby, "The Supreme Court's Impact: Some Problems of Conceptualization and Measurement," Law & Society Review 5: 51 (August 1970).

TABLE 1

NEWS AND EDITORIAL COVERAGE BY TEN DAILY NEWSPAPERS OF 40 SUPREME COURT DECISIONS ON FREE EXPRESSION

(Percentages in Parentheses)

Newspaper and Circulation	News Coverage				Editorial Coverage			
	Inches	Reports	Front Page	Head-lines	Edito-rials	Timely	Pro-Court	Pro-Ex-pression
Wall Street, 1,299,000	428***	34*** (85)	32*** (80)	16*** (40)	4** (10)	2* (05)	2*** (05)	3** (08)
Los Angeles, 1,010,000	411	29 (73)	10 (25)	16 (40)	4 (10)	3 (08)	2 (05)	4 (10)
New York, 834,000	530	34 (85)	16 (40)	24 (60)	7 (18)	5 (13)	7 (18)	6 (15)
Chicago, 682,000	295	34 (85)	1 (03)	23 (35)	13 (33)	9 (23)	11 (28)	10 (25)
Washington, 533,000	600	32 (80)	14 (35)	28 (70)	12 (30)	7 (18)	9 (23)	10 (25)
Dallas, 267,000	160	24 (60)	2 (05)	13 (33)	6 (15)	5 (13)	2 (05)	1 (03)
Atlanta, 213,000	294	30 (75)	6 (15)	20 (50)	4 (10)	2 (05)	2 (05)	4 (10)
Monitor, 186,000	124	22 (55)	6 (15)	13 (33)	7 (18)	4 (10)	7 (18)	5 (13)
Austin, 102,000	127	20 (50)	5 (13)	12 (30)	4 (10)	0 (00)	3 (08)	2 (05)
Waco, 28,000	107	30 (75)	19 (48)	14 (35)	3 (08)	2 (05)	1 (03)	3 (08)
MEAN	308	29 (72)	11 (28)	18 (45)	6 (16)	4 (10)	5 (12)	5 (12)

*X^2 significant, $p<.05$, df=9

**X^2 significant, $p<.025$, df=9

***X^2 significant, $p<.001$, df=9

Circulation source: 1974 Editor & Publisher Year Book (New York: Editor & Publisher Co., 1974).

press rights. And of 15 decisions that received 40 or fewer inches, 13 were speech cases.

Editorial coverage also strongly favored press decisions. Of 8 decisions that were discussed in three or more editorials, all except Tinker[13] dealt with press rights. Two press decisions were discussed in editorials in all ten newspapers: the Pentagon Papers decision[14] and Tornillo.[15] The Tinker decision received the third most editorials with 5, and the press libel case, Gertz,[16] was fourth in editorials with 4. Some 15 of the First Amendment decisions received no editorial coverage, 12 of them being speech cases.

The Chi square comparison of newspaper coverage of speech and press decisions supported these descriptive statistics (see Table 2). The mean performance of all the newspapers was to devote 3.81 inches to speech decisions and 11.57 inches to press decisions. Speech decisions were reported 60 percent of the time, compared to 85 percent for press cases. Speech decisions were mentioned in headlines 25 percent of the time, to 65 percent for press. And 8 percent of speech decisions received editorial coverage, versus 24 percent for press decisions.

TABLE 2

COMPARISON OF COVERAGE OF 20 SPEECH AND 20 PRESS DECISIONS OF THE SUPREME COURT BY TEN DAILY NEWSPAPERS

Decision Type	News Coverage				Editorial Coverage			
	Inches	Reports	Front Page	Head-lines	Edito-rials	Timely	Pro-Court	Pro-Ex-pression
Speech	762*	119*	47	50*	16*	9*	9*	9*
Press	2,314	170	64	129	48	30	37	39

*x^2 significant, $p<.001$, df=1, N=400

These differences were significant beyond the .001 level for all except the front page characteristic.

It was not clear from the analysis in Table 2 that differences existed in the qualitative measures of editorial coverage--timely, pro-Court, pro-expression. The apparent differences may have resulted from the disparity in editorials published about press and speech, which was 48 to 16. To clarify this, separate chi square tests were conducted for this subset of 64 cases for the three qualitative characteristics of editorial coverage. In percentages, the press editorials were more timely than speech editorials (63 to 56), more favorable toward the Court (77 to 56) and more favorable toward free expression interests (81 to 56). These differences were not significant for timeliness (X^2=.20, df=1, p=n.s.) or for Pro-Court (X^2=2.43, df=1, p=n.s.). However, editorials on press rights were significantly more favorable toward free expression (X^2=4.000, df=1, p<.05). An editorial sample with a larger N-size would have permitted more sensitive tests of these qualitative measures.

The four regression equations (Table 3) established that the press-speech variable accounted for significant amounts of variance in the four criterion-coverage variables, beyond what was contributed by the two legal significance variables. The amount of variance contributed by the press-speech variable exceeded the .001 probability in all four equations. Thus press-speech was positively and significantly associated

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[13]Tinker v. Des Moines School District, 393 U.S. 503 (1969).

[14]New York Times Co. v. United States, 403 U.S. 713 (1971).

[15]Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974).

[16]Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

TABLE 3

CONTRIBUTION OF THREE PREDICTORS TO COVERAGE CHARACTERISTICS IN FOUR REGRESSION EQUATIONS

Variable Source	Multiple Correlation	Variance Accounted For	Change in Variance	F	df	P less than
Inches as Criterion						
Citations	.107	.011	.011	.832	1, 398	n.s.
Length	.133	.018	.006	.204	1, 398	n.s.
On Press	.318	.101	.083	36.641	1, 398	.001
Combined	.318	.101	.101	14.816	3, 396	.001
Reports as Criterion						
Citations	.197	.039	.039	7.548	1, 398	.01
Length	.216	.047	.008	.719	1, 398	n.s.
On Press	.324	.105	.058	26.660	1, 398	.001
Combined	.324	.105	.105	15.440	3, 396	.001
Headlines as Criterion						
Citations	.107	.011	.011	.485	1, 398	n.s.
Length	.136	.018	.007	.036	1, 398	n.s.
On Press	.399	.159	.141	66.299	1, 398	.001
Combined	.399	.159	.159	24.983	3, 396	.001
Editorials as Criterion						
Citations	.097	.009	.009	1.495	1, 398	n.s.
Length	.097	.009	.000	.550	1, 398	n.s.
On Press	.229	.052	.043	17.968	1, 398	.001
Combined	.229	.052	.052	7.298	3, 396	.001

with whether a decision was reported, column inches devoted to it, mention of a decision in a headline, and publication of an editorial about the decision. And this association was significant when two measures of legal significance were held constant.

Summary and Discussion

This study found that daily newspapers differed significantly in the news and editorial coverage given free expression decisions of the U.S. Supreme Court. A Chicago paper reported on 34 of 40 decisions and editorialized on 13; an Austin, Texas, paper reported on 20 and editorialized on 4. The mean performance of the ten dailies was to devote 7.72 inches to a Court decision, reporting a decision 72 percent of the time, publishing it on page one 28 percent, and headlining the decision 45 percent of the time. Decisions were mentioned in editorials for 16 percent of the occasions. Most of these editorials favored both the Supreme Court action (72 percent) and the free expression interest (75 percent). Thus negative editorials were the exception.

The ten newspapers combined gave significantly greater coverage to the press decisions, reporting press cases 85 percent of the time (to 60 percent for speech cases), mentioning press decisions in headlines 65 percent of the time (to 25), and editorializing on press decisions 24 percent of the time (to 8). Also, newspapers favored free expression significantly more often in editorials about press than speech (81 to 56 percent, $p<.05$).

Four regression equations showed that the press-speech variable was a significant predictor of news and editorial coverage of the Court decisions when two measures of legal significance were held constant--number of states that had cited a decision and the length

of the majority opinion.

This study demonstrated that metropolitan newspapers gave more intensive news and editorial coverage to press than speech decisions of the U.S. Supreme Court, and that these differences exceeded what might be caused by differences in the legal significance of the decisions. Thus the findings and conclusions of Stevens[17] generally were supported, and the Bowles[18] findings contradicted. The press did provide more detailed and favorable coverage of the legal issues that affected the press.

The causes of such lopsided reporting are not clear. It might be an obvious result of blatant press bias and self-interest and conscious efforts by the news media to devote considerable space to those civil liberties that affect the press. Or, the causes might be more subtle. The press unconsciously may give press decisions more coverage because of its greater familiarity with free press issues. As acknowledged by Chief Justice Warren E. Burger, such an emphasis may be healthy:

> But it is good that journalists react quickly on press freedom. If you and your predecessors had not been alert, we probably would not have all the great freedoms we cherish.19

Burger here conceded that press freedom was of fundamental importance. However, he did not say that it was of greater importance than speech.

Two decisions of the Burger Court have guaranteed a very high

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[17]Stevens, "Freedom of Expression," p. 25; Stevens, "Suppression of Expression," p. 191.

[18]Bowles, "Newspaper Support," p. 279.

[19]Warren E. Burger, "The Interdependence of Judicial and Journalistic Independence," Georgetown Law Journal 63: 1195 (July 1975).

degree of independence for the press. In Tornillo[20] the Court barred state governments from requiring newspapers to afford reply space to candidates who had been criticized by a newspaper. And in CBS[21] the Court upheld the right of broadcasters to refuse all editorial advertisements. In the absence of any kind of right of access to the privately owned mass media, the rights of individuals to free speech become even more important. This was recognized by First Amendment scholar Walter Berns:

> Not everyone has access to the mass media, so a genuinely free exchange of political opinions, and the wide dissemination of information needed if government is to be responsible to the will of the people, requires the availability of other "media," or necessitates reasonable access to facilities that provide a substitute for the press as traditionally understood.22

Berns' "other media" and "facilities that provide a substitute for the press" largely concern public forums and traditional speech rights. Thus freedom of speech should be just as significant and newsworthy as freedom of press.

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[20]418 U.S. 241 (1974).

[21]Columbia Broadcasting System v. Demotrat Nat. Comm., 412 U.S. 94 (1973).

[22]Walter Berns, The First Amendment and the Future of American Democracy (New York: Basic Books, 1976), p. 189.

APPENDIX

SUPREME COURT SPEECH AND PRESS DECISIONS

The 20 decisions on press rights were: Time, Inc. v. Hill, 385 U.S. 374 (1967); Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967); St. Ament v. Thompson, 390 U.S. 727 (1968); Citizen Publishing Co. v. United States, 394 U.S. 131 (1969); Greenbelt Coop. Pub. Assn. v. Bresler, 398 U.S. 6 (1970); Patriot Co. v. Roy, 401 U.S. 265 (1971); Ocala Star-Banner Co. v. Damron, 401 U.S. 295 (1971); Time, Inc. v. Pape, 401 U.S. 279 (1971); Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971); New York Times Co. v. United States, 403 U.S. 713 (1971); Kois v. Wisconsin, 408 U.S. 229 (1972); Branzburg v. Hayes, 408 U.S. 665 (1972); Pittsburgh Press Co. v. Human Rela. Comm., 413 U.S. 376 (1973); Jenkins v. Georgia, 418 U.S. 153 (1974); Hamling v. United States, 418 U.S. 87 (1974); Gertz v. Welch, Inc., 418 U.S. 323 (1974); Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974); Cantrell v. Forest City Pub. Co., 419 U.S. 245 (1974); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975); Bigelow v. Virginia, 421 U.S. 809 (1975). The 20 decisions on speech rights were: Cameron v. Johnson, 390 U.S. 611 (1968); Food Employees v. Logan Valley Plaza, 391 U.S. 308 (1968); Carroll v. Commissioners of Princess Anne, 393 U.S. 175 (1968); Tinker v. Des Moines Community School Dist., 393 U.S. 503 (1969); Shuttlesworth v. Birmingham, 394 U.S. 147 (1969); Gregory v. Chicago, 394 U.S. 111 (1969); Street v. New York, 394 U.S. 576 (1969); NLRB v. Gissel Packing Co., 395 U.S. 575 (1969); Bachellar v. Maryland, 397 U.S. 564 (1970); Schacht v. United States, 398 U.S. 58 (1970); Cohen v. California, 403 U.S. 15 (1971); Flower v. United States, 407 U.S. 197 (1972); Central Hardware Co. v. NLRB, 407 U.S. 539 (1972); Grayned v. City of Rockford, 408 U.S. 104 (1972); Papish v. University of Missouri, 410 U.S. 667 (1973); Norwell v. Cincinnati, 414 U.S. 14 (1973); Lewis v. New Orleans, 415 U.S. 130 (1974); Parker v. Levy, 417 U.S. 733 (1974); Spence v. Washington, 418 U.S. 405 (1974); American Radio Assn. v. Mobile Steamship Assn, 419 U.S. 215 (1974).